

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
)	
v.)	Criminal No. 15-CR-10127-MLW
)	
)	
TIMOTHY FLAHERTY,)	
Defendant)	
)	

DEFENDANT’S RESPONSE IN OPPOSITION TO
GOVERNMENT’S MOTION TO STRIKE

Now comes the defendant Timothy Flaherty who, pursuant to Local Rule 7.1(b)(2), hereby opposes the Government’s Motion to Strike Motion for Order Requiring the Government to Produce Department Of Justice and United States Attorney’s Office Records Demonstrating the Unlikelihood of Any Federal Investigation and/or Prosecution for Violations of 18 U.S.C. §249 (Dkt. 19) and states the following:

The Government elevates form over substance. It has been more than 28 days since arraignment within which time, according to Local Rule 116.2(b)(1), the Government is required to produce evidence in their possession that tends to negate the defendant’s guilt as to any essential element of the charged crime. The defendant, through the motion at issue, particularized a set of discovery demands for exculpatory evidence and explained the principled basis for them. The Government, in its automatic discovery letter denied having any exculpatory evidence. The issue is joined: whether the specific documents set forth in the motion are exculpatory. The motion is substantively ripe to be heard and resolved. The issues are important. Whether there was a

“reasonable likelihood” of a federal criminal investigation or prosecution of attorney Flaherty’s client—who is facing pending state charges for the same conduct—at the time of the events alleged to have occurred in December 2014, and thereafter in May 2015, are pivotal issues in this case. Whether such a federal criminal investigation or prosecution was reasonably likely, independent of the targeting of attorney Flaherty, is a viable subordinate question that also interfaces the Brady demands. The defendant requests that the Court either address these issues given the Government’s post-motion denial of possessing any Brady information as defined by Local Rule 116.2 or hold the motion in abeyance as he concurrently requests the very same information via a letter demand pursuant to Local Rule 116.3(a).

Respectfully Submitted
By his attorneys,

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Date: June 25, 2015

Certificate of Service

I, Martin G. Weinberg, hereby certify that on this date, June 25, 2015, a copy of the forgoing document has been served via CM/ECF Electronic Filing, upon Assistant U.S. Attorney Robert Fisher and all other counsel of record.

/s/ Martin G. Weinberg
Martin G. Weinberg